

PETITION TO THE CONFIRMING OFFICER

on behalf of

FRANZ HOESLER (Number 5), JUANA GERMANN (Number 6), ELISABETH VOLKENRATH (Number 7),
and HERTA FIEBERT (Number 8)

in accordance with

Paragraph 12 of Appendix 'E' to MACR Administrative Instruction No 104 of 1945,
being Extracts from Regulations for the Trial of War Criminals under the Royal
Warrant of 14th June and 4th August 1945.

YOUR PETITIONERS were charged with COMMITTING A WAR CRIME in that they at
BREMEN - BELSEN, Germany, between 1st October 1942 and 30th April 1945, when members
of the BREMEN - BELSEN Concentration Camp responsible for the well-being of the
persons interned there, in violation of the law and usages of War were together
concerned with others also indicted as parties to the ill-treatment causing the
deaths and physical suffering of certain named and unnamed individuals all
alleged to be Allied Nationals.

YOUR PETITIONERS were further charged with COMMITTING A WAR CRIME in that they
at AUSCHWITZ, Poland, between 1st October 1942 and 30th April 1945 as members of
the staff of AUSCHWITZ Concentration Camp responsible for the well-being of the
persons interned there, in violation of the law and usages of War were together
concerned with others also indicted as parties to the ill-treatment causing the
deaths and physical suffering of certain named and unnamed individuals all alleged
to be Allied Nationals.

On 14th October 1945, after Trial, the accused FRANZ HOESLER was found NOT GUILTY
under the BREMEN - BELSEN Charge, and GUILTY under the AUSCHWITZ Charge.

On 19th November 1945 the following sentence was pronounced :-

To suffer Death by Hanging.

JUANA GERMANN was found NOT GUILTY on the BELSEN Charge and GUILTY under the AUSCHWITZ
Charge, and the following sentence was pronounced :-

To suffer Death by Hanging.

ELISABETH VOLKENRATH was found GUILTY under both Charges and the following sentence
was pronounced :-

To suffer Death by Hanging.

HERTA FIEBERT was found GUILTY under the BELSEN Charge and NOT GUILTY under the
AUSCHWITZ Charge, and the following sentence was pronounced :-

To suffer imprisonment for 15 years.

YOUR PETITIONERS in consequence now petition against the FINDINGS and SENTENCES
on the grounds following :-

.../2.

1. That the Petitioners are NOT GUILTY.
2. THAT THE CHARGES AS LAID DO NOT DISCLOSE A WAR CRIME and therefore that the Finding is incompetent.

In support of this ground of Petition the following submissions are respectfully made :-

(a) Violations of the recognised and unchallenged rules of warfare must have a direct connection with the War, they must be concerned with military operations, and must be something the prevention of which is a means of protecting military operations. The acts alleged against your Petitioners have none of these characteristics. They were, if they had been committed at all, committed in the service of the Concentration Camp system which was a matter of German State Policy begun before the War, and, though continued throughout the War, would have proceeded after it if the German Nation had been the victors. It was a policy in no way related to the Prosecution of the War and one which merely extended the scope of its operation during the War.

(b) With certain exceptions not including the case in question, if a crime is committed by an individual in the execution of a policy enjoined on him by his or her Government that crime is one which cannot be visited against the individual. It is a matter for high diplomatic action directed towards securing compensation by way of reparation, or, in the present instance, for accusation and conviction at the NUREMBERG Process. The Charge as laid is therefore irrelevant in respect of individuals.

(c) If the actions alleged against your Petitioners be considered proved then they are common crimes and ought to be dealt with in ordinary criminal Courts as administered by Allied Military Government.

(d) Where there is a conflict between International Law and a Government's directives to its subjects the subject is bound to obey his Government's directive. The rule of law which contends that a man must disobey at his own peril an order which must appear to him illegal and contrary to normal human standards does not apply to an order passing from the State to an individual, and concerns only orders from a superior to an inferior, the compulsion to disobey being based on the implication that protection will be afforded to the individual who refuses compliance.

The Address by Colonel H.A. Smith as it appears in Pages 21 to 44 of Volume 45 of the Transcript of Evidence is referred to and respectfully adopted with regard to the above grounds and it is further respectfully submitted that in his Summing-up on these arguments before the Court the learned Judge Advocate General misdirected the Court.

SUBMISSIONS

THAT THE SENTENCES IMPOSED ARE IN ANY EVENT UNWARRANTED AND/OR EXCESSIVE.

In support of this ground of Petition the following submissions are respectfully made :-

..... /3.

1. - IN RESPECT OF FRANZ HOSSLER.

As this Petitioner was found NOT GUILTY on the AUSCHWITZ Charge it may be presumed that he was condemned because of his connection with Selections for the Gas Chamber and/or his connection with the public hanging of four women accused of stealing explosives.

As far as Gas Chamber Selections were concerned it is contended that the evidence before the Court fails to prove any more than this Petitioner admits, i.e. that he was forced to be present to maintain order and that he took no selective or other malicious part.

But, even if otherwise, it is respectfully submitted that the defence of acting under coercion ought to be accepted or alternatively if it cannot be accepted as nullifying guilt it can and ought to be accepted in mitigation of sentence, a principle accepted by all legal systems.

This Petitioner appeals for consideration in this respect and directs attention to the evidence adduced in his favour. This is contained in the evidence of ERIKA SCHOFF (Transcript Volume 24), the accused STAROWSKA (Questioned by the Court - Transcript Volume 40), the witness KOMSA (Transcript Volume 40 Page 19) and the accused HELENA KOPFER (in Cross-Examination). This evidence demonstrates that this Petitioner did all he could to save victims intended for the Gas Chamber, that his presence in Selection Parades was impossible for him to avoid and that he did every thing in his power to improve camp conditions. Indirect evidence in support of this is (i) the absence of allegations of personal brutality, and (ii) the evidence which secured the finding of NOT GUILTY on the AUSCHWITZ Charge.

As far as the Public Hanging is concerned it is contended that no responsibility can be laid on this Petitioner. Orders were received in circumstances demonstrating due legal process and only the duties of a public executioner were performed, properly as far as this Petitioner was concerned.

2. In respect of ELISABETH VOLKENRATH.

The inference from the Finding in respect of this accused is that full attention was paid by the Court to Affidavit Evidence, and this Petitioner, who denies the truth of the allegations, respectfully suggests such evidence ought not to be relied upon in the imposition of a Death Sentence. In the case of witnesses who came before the Court and were subjected to Cross-Examination no allegations warranting such a penalty were made, with the possible exception of allegations that this Petitioner was present at and selected victims for the Gas Chamber at AUSCHWITZ.

If the supreme penalty was inflicted because of the Gas Chamber allegations the same grounds of Petition as for the Petitioner FRANZ HOSSLER are adopted, with the exception that there is no evidence the Petitioner VOLKENRATH was instrumental in saving lives.

This Petitioner prays that the evidence be examined anew and the wide gulf which exists between written and oral evidence be particularly noted.

3. In respect of JUANA NORMANN.

Attention is respectfully drawn to the Oral Evidence against this Petitioner, and it is submitted that this evidence, with especial reference to the testimony of DORA SZAFRAN, is so contradictory as to dates that it ought to have been regarded as totally unreliable.

In respect of the Affidavit Evidence all the instances sworn to are alleged at a time when this Petitioner swore that she was NOT in the Camp in question, a matter as to which she was not shaken in Cross-Examination. It is further submitted that insufficient evidence exists on which to find this Petitioner was taking part in selections for the Gas Chamber or in ill-treatment by beating. So far as beating is concerned the Oral Evidence confirms her own admissions, the extent of which cannot be held to involve criminal liability.

......./4.

• In respect of JUTRA WILKIE.

This Petitioner respectfully prays that the evidence against her be considered anew and submits that even if accepted it does not warrant such a severe sentence. She submits that her replies to all the allegations against her are so reasonable and unshaken in Cross-Examination that they ought to have been accepted by the Court and that the Judge Advocate General ought to have directed accordingly.

Attention is also respectfully drawn to the evidence in favour of this Petitioner by the witnesses JUTRA MADLUNG and INGH MADLUNG, concerning her conduct at RAVENSDRUK and admitted by the Prosecution. This Petitioner requests that this be taken into consideration for reduction of the sentence imposed, should the Finding not be reversed.

• In respect of ALL Petitioners.

Reference is respectfully made to Closing Speech by Defence Council recorded on Pages 15 to 33 of Volume 46 of the Transcript of Evidence.

SIGNED for and on behalf of the Petitioners by MAJOR A.S. MUNRO RASC,
2 Coy R.A.S.C. (Inf Bde), Defence Officer Appointed, this 20th day of
November 1945.

A. S. Munro

Defending Officer Appointed.

Copies in Translation to the Petitioners.